



POLICE DEPARTMENT

November 21, 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Harold Bajana
Tax Registry No. 934443
34 Precinct
Disciplinary Case Nos. 2009-0805, 2010-2604 & 2010-2728

The above-named member of the Department appeared before the Court on October 5, 2011, charged with the following:

Disciplinary Case No. 2009-0805

1. Said Police Officer Harold Bajana, assigned to the 34th Precinct, while on duty on March 10, 2008, on or about 1900 hours, in the vicinity of the intersection of 181st Street between Broadway, New York County, did fail to provide his name and shield number to Gabrielle Fisher when requested.

P.G. 203-09, Page 1, Paragraph 1 – PUBLIC CONTACT, NAME AND SHIELD

2. Said Police Officer Harold Bajana, assigned to the 34th Precinct, having had an Encounter with Ms. Gabrielle Fisher on March 10, 2008, on or about 1900 hours, did fail to make an Activity Log entry regarding said incident.

P.G. 212-08, Page 1, Paragraph 1 ACTIVITY LOGS

Disciplinary Case No. 2010-2604

1. Said Police Officer Harold Bajana, assigned to the 34th Precinct, while on-duty, on or about May 29, 2009, was discourteous to New York City Police Sergeant Jason Liles, in that, when instructed to complete a complaint form. Police Officer Bajana stated to Sergeant Liles, “Why are you babysitting me?” and “I am not out there on patrol with my thumb up my ass,” and “That is the way I fucking talk and if you don’t like it, then that is tough.”

P.G. 203-09, Page 1, Paragraph 2 GENERAL REGULATIONS

2. Said Police Officer Harold Bajana, assigned to the 34th Precinct, while on-duty, on or about June 23, 2009, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Bajana, having commenced meal period at 2017 hours and finished said meal period at 2128, failed to return from said meal period at the required time.

P.G. 212-02, Pages 1-2 MEAL PERIOD
P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

3. Said Police Officer Harold Bajana, assigned to the 34th Precinct, while on-duty, on or about June 21, 2009, at a Pathmark Supermarket, New York County, failed to notify a desk officer of an incident involving a child under sixteen years of age who had allegedly committed an offense and was being held at said location.

P.G. 215-09, Pages 1-2 – OFFENSE COMMITTED BY A JUVENILE UNDER 16
YEARS OF AGE (OTHER THAN A JUVENILE OFFENDER)

4. Said Police Officer Harold Bajana, assigned to the 34th Precinct while on-duty, on or about June 21, 2009, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that, failed to have his Department identification at roll call.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

5. Said Police Officer Harold Bajana, assigned to the 34th Precinct, while on-duty, on or about June 21, 2009, at a Pathmark supermarket, New York County, failed to complete a Juvenile Report (PD377-151) regarding a police incident involving a child under sixteen years of age who had allegedly committed an offense and was being held at said location.

P.G. 215-09, Pages 1-2 OFFENSE COMMITTED BY A JUVENILE UNDER 16
YEARS OF AGE (OTHER THAN A JUVENILE OFFENDER)

6. Said Police Officer Harold Bajana, assigned to the 34th Precinct, on or about June 21, 2009, while on-duty, in the vicinity of 410 West 207th Street, New York County, failed to make proper Activity Log entries as required.

P.G. 212-08, Page 1, Paragraph 1 ACTIVITY LOGS

Disciplinary Case No. 2010-2728

1. On or about January 26, 2010, within the confines of the 34th Precinct, Police Officer Harold Bajana failed to process a Civilian Complaint Form (PD313-154) from Person A alleging misconduct by another member of the service.

P.G. 207-31 – PROCESSING CIVILIAN COMPLAINTS

The Department was represented by Mary Lynne Frey, Esq., Department Advocate's Office. Respondent was represented by Stephen C. Worth, Esq., Worth, Longworth & London LLP.

Respondent, through his counsel, pleaded Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent had been a member of the Department for seven years. For four of those years, he worked at the 34 Precinct on patrol. On March 10, 2008, he got into a motor vehicle accident with Gabrielle Fisher in the vicinity of 181st Street and Broadway. His police vehicle struck her bicycle. Respondent filled out the motor vehicle accident report, as well as an incident slip. He gave the latter to Fisher, as the former still had to be processed, but she asked him for his name and shield number. He admitted not telling her this information. He testified that the same information was located on the slip he gave to Fisher. Respondent understood now that he was required to provide this information upon request. Furthermore, Respondent admitted, he did not enter the incident into his Activity Log. He had no legitimate reason for failing to make such an entry.

In May 2009, an incident took place between Respondent and Sergeant Jason Liles. They did not have a good supervisor-subordinate relationship. On the date in question, Respondent

and Liles were inside the 34 Precinct station house. While Liles was speaking to Respondent about having not completed complaint reports on two occasions, Respondent stated to Liles, “Why are you babysitting me?”, “I am not out there on patrol with my thumb up my ass,” and, “That is the way I fucking talk and if you don’t like it, then that is tough.” Liles was the desk officer on this day. Respondent made these remarks because he was “going through a bad time, a lot of emotions involved and it just came out the wrong way.” In addition, Respondent felt that he was “being singled out at certain times” by Liles.

In June 2009, Respondent responded to a radio run for “disorderly” at a Pathmark supermarket on West 207th Street. Earlier that day, he had failed to appear at roll call with his Department identification card. This happened because he was in a rush to get dressed and forgot his ID, which had been in his pocket. He retrieved it before going out on patrol. Respondent admitted that he was reprimanded for not having his ID on the date in question because it had happened before.

Upon arrival at the Pathmark, Respondent spoke with a security guard and found that a 12- or 13-year-old juvenile had been “knocking over some jars.” The guard requested that Respondent contact the parents and bring him home. Respondent asked the juvenile his address and brought him there, where his mother was present. Respondent, however, did not notify the desk about this incident. He also did not fill out a juvenile report or make an Activity Log entry. He did not do these things because he felt that there was no offense committed, although he realized now that what the guard described did constitute an offense.

Respondent admitted that when he responded to the Pathmark complaint, he did not write down the security guard’s name. He denied being told by the guard that rowdy teenagers were an ongoing problem at the store. Respondent also did not go into the store and examine the

items that had been knocked over by the juvenile. Finally, he did not ask for the boy's name or identification. He subsequently was told by Liles's driver that Liles responded to the job after Respondent left.

On January 26, 2010, Respondent was working as the telephone switchboard operator. A citizen, Person A [REDACTED] approached him to file a complaint about a detective assigned to the 33 Precinct. Person A [REDACTED] stated that he felt intimidated by the detective and that the detective was harassing him. Respondent referred Person A [REDACTED] to the detective's supervisor at the 33 Precinct. He admitted, however, that he should have taken the complaint himself and notified the desk officer.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on June 1, 2004. Information from his personnel file that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has pleaded Guilty to a variety of disciplinary offenses. According to both Respondent's testimony and the Advocate, many of these arose due to problems Respondent had with Sergeant Jason Liles. The most serious incident occurred when Liles complained to Respondent that he had not properly dealt with two complainants that had come to the precinct to file reports. Respondent admitted that he told Liles, "Why are you babysitting me?" and "I am not out there on patrol with my thumb up my ass." He added, "That is the way I fucking talk and if you don't like it, then that is tough."

Dealing with civilians was apparently a problem for Respondent. He also pleaded Guilty to failing to process a civilian complaint from Person A [REDACTED] who came into the 34 Precinct

complaining about harassment and intimidation by a detective from another command. Respondent inappropriately referred the individual to the detective's supervisor in the other command, when the proper thing to do was simply to take the complaint and forward it to the Internal Affairs Bureau, an investigations unit, or the Civilian Complaint Review Board. In another incident, Respondent hit a bicyclist, Fisher, with his vehicle, then failed to give his name and shield number when requested by her. He admitted not giving this information, testifying that he instead gave Fisher an incident slip on which his name and shield number were listed. As the Court pointed out at trial, however, civilians are not expected to be investigators and look through Department documents for pertinent information. That is one reason for the identification requirement, and it holds especially true in a tense and possibly hostile incident where a police officer hits a bicyclist with his vehicle.

Another failure to handle a case properly came when Respondent was called to a Pathmark supermarket on a call for disorderly persons. A security guard informed him that some unruly juveniles were knocking over items from the shelves. Respondent admitted at trial that this would constitute an offense. At the time, however, Respondent asserted that he did not believe it to be an offense. Respondent pleaded Guilty to failing to inform the desk officer that he was holding a juvenile suspected of an offense. He also failed to complete a juvenile report. Respondent brought the juvenile home and placed him into the custody of his mother. Respondent failed, however, to document any of his actions with regard to the job in his Activity Log.

Viewed individually, these might be seen as relatively minor infractions. Respondent, however, has demonstrated that he has a problem giving proper attention to the paramilitary demands of the Department. He performed his job tasks his own way, without regard to the

correct procedures, and then acted belligerently toward a supervisor when told he was incorrect. It is Respondent's "personal responsibility to insure that he is in compliance with not only all Patrol Guide procedures, but also with the specific requirements of his particular assignment on a given tour of duty." See Case Nos. 80214/04 et al., signed Nov. 8, 2006. Moreover, Respondent's "belligerent and discourteous behavior bespeaks of an insubordinate and disingenuous demeanor which is unacceptable within our para-military organization," see Case No. 81635/06, signed Aug. 23, 2007.

Accordingly, the Court recommends that Respondent be *DISMISSED* from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code of the City of New York, during which time he is to remain on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. The Court further recommends that the Respondent forfeit 30 vacation days. See Case No. 83155/07 et al., signed June 21, 2010 (member with one prior adjudication for coming to work drunk and lying about it received 30 days and one year of probation for a series of violations, including arriving late to work on several occasions, giving a ride to a discharged prisoner, leaving a juvenile unattended, failing to keep proper Activity Log entries, and failing to thoroughly search a prisoner).

Respectfully submitted,

APPROVED

RAYMOND W. KELLY
POLICE COMMISSIONER


David S. Weisel
Assistant Deputy Commissioner Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

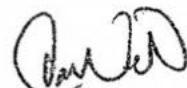
To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER HAROLD BAJANA
TAX REGISTRY NO. 934443
DISCIPLINARY CASE NOS. 2009-0805, 2010-2604 & 2010-2728

In 2010, Respondent received an overall rating of 3.5 "Highly Competent/Competent" on his annual performance evaluation. He was rated 4.0 "Highly Competent" in 2008 and 3.0 "Competent" in 2009. [REDACTED]

[REDACTED] Based on his overall record, he was placed on Level-II Discipline Monitoring in April 2011. He has no prior formal disciplinary record.

For your consideration.



David S. Weisel
Assistant Deputy Commissioner Trials